IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/06/2004

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THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.9901 of 1996

K.Sampath .. Petitioner

-Vs-

1. Commissioner,
Kandili Panchayat Union,
Tiruppattur Taluk,
North Arcot Ambedkar District.

2. K.Veerabadran .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records of the impugned order passed by the 1st respondent in Na.Ka.No.A3.2677/96, dated 8.7.1996 and quash the same and thereby direct the 1st respondent to reinstate the petitioner in service with all the arrears of salary, attendant benefits, with costs and damages.

!For petitioner : M/s.P.V.Bakthavatchalam

^For respondents: Ms.J.Sathyavathi for
Mr.R.Ravichandar
No appearance for R-2

:ORDER

The order of termination dated 8.7.1996 issued by the Commissioner, Kandili Panchayat Union, the first respondent herein, against the petitioner, is under challenge in this writ petition, seeking for quashing of the same through a writ of certiorarified mandamus.

2. Relevant facts are as follows:

(a) K.Sampath, the petitioner herein joined as Overhead Tank Operator in the Panchayat Union in 1989 as per the order of the Commissioner, Kandili Panchayat Union, the first respondent herein. Initially, his monthly salary was Rs.60/-. Subsequently, it was increased to Rs.100/- and thereafter to Rs.110/-.

(b) The petitioner and his associates have made a demand through certain representations for regularisation of their services. Their demand was not considered. The petitioner continued to work only as a temporary servant.

(c) Suddenly, the petitioner was shocked to see that the impugned order dated 8.7.1996 was affixed on his house door intimating that his services were terminated from the forenoon of 9.7.1996 for the reason that he was not working satisfactorily. By the very same impugned order, it was indicated that one Veerabadran, the second respondent herein was appointed in his place. Challenging the same, this writ petition has been filed.

3. The main grievance of the writ petitioner is that the impugned order is mala-fide, as the same was done under political pressure and the termination of the services of the petitioner on the ground that he was not working properly, was without prior notice and therefore, the impugned order is violative of principles of natural justice and fundamental rights as guaranteed under the Constitution of India.

4. A counter affidavit has been filed by the first respondent refuting the allegations contained in the affidavit filed in support of the writ petition, stating that the petitioner, who was working as Overhead Tank Operator, was not performing his duties properly and therefore, the Village Panchayat, on 8.7.1996, had resolved to terminate the petitioner and recommended for new appointment of the second respondent - Veerabadran, and in pursuance of the said resolution, the first respondent issued the impugned order. It is further stated that the petitioner's job is purely on temporary basis and as such, the impugned order is sustainable.

5. Learned counsel for the petitioner, on the strength of the decisions of the Supreme Court reported in (i) 1981 (1) L.L.J. 386 (Surendra Kemar Verma vs. Central Govt. Indl. Trib.), (ii) AIR 1999 SC 983 (D.P.Benerjee vs. S.N. Bose National Centre for Basic Sciences, Calcutta) and (iii) 2000 (3) SCC 239 (V.P.Ahuja vs. State of Punjab), would submit that the impugned order is stigmatic and as such, failure to conduct enquiry by giving opportunity to the petitioner, would vitiate the impugned order.

6. I have carefully considered the submissions made by learned counsel for the petitioner and also heard the learned counsel for the first respondent.

7. While deciding the issue, it would be proper to look into the impugned order. The impugned order dated 8.7.1996 would merely say that the petitioner was not working properly and therefore, his services were terminated and in his place, which is a temporary one, one Veerabadran, the second respondent herein is appointed.

8. Thus, it is clear that the first respondent passed the order of termination, since according to him, the petitioner was not working properly and as such, his work was not satisfactory.

9. It is settled law that if the findings as against the delinquent were arrived at in inquiry as to misconduct, behind the back of the delinquent, the simple order of termination will be bad, as the same is founded on the allegations regarding misconduct. If the inquiry was not held and no finding was arrived at, in other words, the employer was not inclined to conduct the inquiry, but at the same time, he did not want to continue the employee against whom there were complaints, it will only be a case of motive and the order would not be bad.

10. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and as

such, the simple order of termination would be valid.
11. But if the termination contains some stigma, definitely, the effect of the order of termination would cause an impact on a person's future prospects of employment. If the simple order of termination without any stigma was passed, it would enable the delinquent to make good in other walks of like without a stigma. On the other hand, if the order contained a stigma, without enquiry or opportunity, the termination would be bad, for the individual concerned must suffer a substantial loss of reputation which may affect his future prospects.
12. In this context, we have to see as to what amounts to stigma. As held by the Supreme Court in AIR 1999 SC 983 (cited supra), the " stigma" is something that detracts from the character or reputation of a person, a mark, sign, etc., indicating that something is not considered normal or standard.
1`3. The Webster's Third New International Dictionary gives the meaning of "stigma" as a mark or label indicating a deviation from a norm. According to yet another dictionary, "stigma" is a matter for moral reproach.
14. The above decision of the Supreme Court reported in AIR 1999 SC 983 would quote earlier Supreme Court decision in the case of State of Orissa vs. Ram Narayan Das (AIR 1961 SC 177) and observe that the use of the words "unsatisfactory work and conduct" in the termination order, will not amount to stigma. These observations would give direct answer for the issue raised in this writ petition.
15. Though in the counter affidavit it has been admitted by the first respondent that some complaints have been received against the petitioner, the termination order would indicate that the authority concerned, namely the first respondent herein would come to the conclusion that the petitioner's work was unsatisfactory as he was not doing his work properly.
16. When this is not considered to be a stigma as per the observations of the Supreme Court referred to above, then it goes without saying that the impugned order cannot be said to be invalid, merely because it

was passed without conducting any enquiry.
17. Under those circumstances, I do not find any merit in the writ petition and the same is dismissed. No costs.

Index: Yes
Internet: Yes
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To
Commissioner,
Kandili Panchayat Union,
Tiruppattur Taluk,
North Arcot Ambedkar District.

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